

Decision 05-10-009 October 6, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Gas Company
for authority to update its gas revenue
requirement and base rates. (U 904 G)

Application 02-12-027
(Filed December 20, 2002)

Application of San Diego Gas & Electric
Company for authority to update its gas and
electric revenue requirement and base rates.
(U 902-M)

Application 02-12-028
(Filed December 20, 2002)

Investigation on the Commission's Own Motion
into the Rates, Operations, Practices, Service and
Facilities of Southern California Gas Company
and San Diego Gas & Electric Company.

Investigation 03-03-016
(Filed March 13, 2003)

**OPINION GRANTING INTERVENOR COMPENSATION
TO AGLET CONSUMER ALLIANCE FOR SUBSTANTIAL
CONTRIBUTIONS TO DECISION 05-03-023**

1. Summary

This decision awards the Aglet Consumer Alliance (Aglet) \$66,291.04 in compensation for its substantial contributions to Decision (D.) 05-03-023 on Phase Two of the test year 2004 consolidated general rate cases for Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E).

2. Background

SoCalGas filed Application (A.) 02-12-027 and SDG&E filed A.02-12-028 on December 20, 2002, for authority to update their gas and electric revenue requirements and base rates. These applications were not filed in conformance with the Commission's rate case processing plan but instead with specific exemptions granted as a part of previously adopted incentive ratemaking mechanisms.

Evidentiary hearings in Phase Two were held on June 1 through June 10, 2004. Testimony was received in the evidentiary hearings from numerous witnesses, and exhibits were received in evidence. Active parties filed opening and reply briefs based upon their litigation positions in the proceeding.

D.03-12-057 granted interim rate relief to SoCalGas and SDG&E¹ by establishing memorandum accounts to track any eventual difference in current rates and any increase or decrease adopted by this decision for Test Year 2004. D.04-12-009 modified D.03-12-057 to allow interim relief for the post-test year 2005.

Pursuant to Rule 51 *et seq.* of the Commission's Rules of Practice and Procedure, the Commission adopted in D.05-03-023, with some minor modifications, two partial post-test year ratemaking settlement agreements (settlements) supported by SoCalGas, SDG&E, the Office of Ratepayer Advocates (ORA), The Utility Reform Network (TURN), Aglet, Natural Resources Defense Council (NRDC), and Southern California Generation Coalition (SCGC). The

¹ On April 18, 2003, SoCalGas and SDG&E filed a Motion seeking reconsideration of the April 2, 2003 Scoping Memo. The May 22, 2003 Ruling clarified the Scoping memo as appropriate, and D.03-12-057 was necessary to grant the interim relief request.

settlements resolved or otherwise disposed of post-test year ratemaking issues in Phase Two for both SoCalGas and SDG&E, with the exception of matters related to performance incentives and performance indicators. These matters were decided on the litigation record in the proceeding. The settlements were joined by all active parties who made recommendations in the proceeding on the issues resolved by the Settlement Agreements.

3. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

- a. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (Notice) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
- b. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
- c. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
- d. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)
- e. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the

adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§§ 1801(1), 1803(a).)

- f. The claimed fees and costs are reasonable and are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items a-d above are combined, followed by separate discussions on Items e and f.

4. Procedural Issues

The first prehearing conference in Phase Two was held on March 14, 2003. Aglet filed its timely Notice on April 14, 2003. On April 16, 2003, Administrative Law Judge (ALJ) Long ruled that Aglet is a customer under the Public Utilities Code (§ 1802(b)(1)(C)) and meets the financial hardship condition § 1804(b)(1)). Aglet filed its request for compensation (which is unopposed) on May 16, 2005, within 60 days of D.05-03-023. Aglet has satisfied all the procedural requirements necessary to make its request for compensation.

5. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (*See* § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (*See* §§ 1802(i) and 1802.5.) As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission. (D.98-04-059, 79 CPUC2d, 628 at 653.)

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. With this guidance in mind, we turn to the claimed contributions Aglet made to the proceeding.

Aglet asserts that it made substantial contributions to the proceeding concerning the adopted settlements, including: (1) the settlements' inclusion of the consumer price index instead of the applicants' proposed industry specific cost indices; (2) the method of escalation or change for the cost of capital; and (3) other issues where Aglet did not necessarily agree with applicants or ORA. (See Request, generally pp. 2-3.)

More specifically, Aglet's positions on certain issues, especially for escalation and post-test-year ratemaking, were the most significant discussed in the ALJ's proposed decision (PD). Aglet did not necessarily prevail entirely, but its showing contributed more to shape the discussion and analysis for the litigated outcome in the PD than any other party. Further, the settlements as

adopted by the final decision clearly reflect the movement from the applicants' end-of-litigation positions towards the positions advocated by Aglet.²

Aglet also made significant contributions to the performance incentive discussion and findings in both the PD and D.05-03-023. (The PD and the alternate adopted as D.05-03-023, were essentially identical on these issues.)

Thus, we find, therefore, that Aglet made a substantial contribution to D.05-03-023.

6. Reasonableness of Requested Compensation

Aglet requests \$66,676.54 for its participation in this proceeding broken-down as follows:

Request Summary	
2004	
Staff - Weil, 232.9 hours	\$ 58,225.00
Travel – Weil, ½ rate 31.9 hours	3,987.50
2005	
Staff - Weil, 8.2 hours	2,296.00
Request - Weil, ½ rate 9.3 hours	1,302.00
Expenses	
Copying	225.76
Postage, FAX	76.78
Travel – tolls, parking, mileage	563.50
Total Request	\$66,676.54

The components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. Thus, only those fees and costs associated with the

² Aglet's financial impact on the outcome of the settlement is further discussed below. See "Reasonableness of Requested Compensation."

customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

To assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

Prior to the settlements adopted in D.05-03-023, the range of dispute between Aglet and the applicants was approximately \$321 million. The adopted settlements will yield post-test year revenues that are approximately \$149 million less than requested by SoCalGas and SDG&E, but \$172 million more than proposed by Aglet. The settlement included the use of the consumer price indices (CPI) as proposed by Aglet, as well as ORA and TURN. The decision noted Aglet's agreements in favor of the CPI. We find that Aglet's advocacy resulted in a significant ratepayer benefit when compared to the applicants' proposals. We can therefore find Aglet's participation was productive.

Next, we must assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable. Based upon Aglet's records of the time spent by category (see table below), Aglet's request is reasonable. Aglet documented its claimed hours by presenting a daily breakdown of the hours and a brief description of each activity. The detailed explanation of the hours describes the work task with reference to the two primary litigated issues and the settlement negotiation

process. Therefore, the hourly breakdown reasonably supports the claim for total hours.³

Cost Category	Hours / %
General work	18 – 7%
Settlement	62.3 - 26%
Post-Test Year Ratemaking - litigated	137.3 - 57%
Performance Incentives - litigated	23.5 – 10%
<i>Total</i>	241.1 – 100%

Finally, in determining compensation, we take into consideration the market rates for similar services from comparably qualified persons. Aglet staff has an existing rate approved by the Commission for work performed in 2004. We use that existing rate without further discussion. We will use the current 2004 rate for a minor amount of time⁴ without setting a precedent for a reasonable rate for Weil's work in 2005.

Adopted Rates for Aglet			
Name	Year	Rate	Cites
James Weil	2004	\$250	D.04-12-039
	2005	\$250	

Adopted Compensation Summary	
2004	
Staff - Weil, 232.9 hours	\$ 58,225.00
Travel – Weil, ½ rate 31.9 hours	3,987.50

³ Aglet separated the hours associated with travel and preparation of this compensation request and requests compensation at half the usual hourly rate for this time. It also specifically separated hours between the specific issues and general litigation.

⁴ Weil charged only 8.2 hours for professional work in 2005 compared to 239.5 hours in 2004.

2005	
Staff - Weil, 8.2 hours	2,050.00
Request - Weil, ½ rate 9.3 hours	1,162.50
Expenses	
Copying	225.76
Postage, FAX	76.78
Travel – tolls, parking, mileage	563.50
Total Request	\$ 66,291.04

The itemized direct expenses submitted by Aglet include costs for travel, photocopying, postage, etc., and total \$866.04. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable.

7. Award

We award Aglet \$66,291.04 as compensation for its contributions to D.05-03-023. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing July 30, 2005, the 75th day after Aglet filed its compensation request and continuing until full payment of the award is made.

We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Aglet's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

8. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

9. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Douglas M. Long is the assigned ALJ in this proceeding.

Findings of Fact

1. Aglet made a substantial contribution to our decision on SDG&E's Phase Two post-test year ratemaking and incentives, as described herein.
2. In D.05-03-023, the Commission adopted performance incentives and performance measurements based upon the record as litigated in A.02-12-027 and A.02-12-028. Aglet made a significant contribution to the decision.
3. It is reasonable to use hourly compensation rates previously approved for intervenor compensation.
4. Aglet's itemized direct expenses were reasonable and consistent with the scope of Aglet's participation in this proceeding.
5. The total of the reasonable compensation is \$66,291.04.
6. The Attachment to today's decision summarizes this award.

Conclusions of Law

1. Aglet has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to its claimed compensation as modified herein, incurred in making substantial contributions to D.05-03-023.
2. Aglet should be awarded \$66,291.04 for its contribution to D.05-03-023.

3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

4. This order should be effective today so that Aglet may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. The Aglet Consumer Alliance (Aglet) is awarded \$66,291.04 as compensation for its substantial contributions to Decision (D.) 05-03-023.

2. Within 30 days of the effective date of this decision, Southern California Gas Company and San Diego Gas & Electric Company shall each pay Aglet fifty percent (50%) of the total award, \$33,145.52. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning on July 30, 2005, the 75th day after the filing date of Aglet's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.

4. This proceeding remains open for other Phase Two requests for compensation.

This order is effective today.

Dated October 6, 2005, at Los Angeles, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH

Commissioners

Commissioner John A. Bohn, being necessarily absent, did not participate.

Compensation Decision Summary Information

Compensation Decision:	D0510009	Modifies Decision?
Contribution Decision(s):	D0503023	
Proceeding(s):	A0212027 et al.	
Author:	ALJ Long	
Payer(s):	Southern California Gas Company and San Diego Gas & Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Aglet Consumer Alliance (Aglet)	12/30/04	\$66,676.54	\$66,291.04	No	Used 2004 adopted rates for minor 2005 time.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
James	Weil	Advocate	Aglet	\$250	2004	\$250
James	Weil	Advocate	Aglet	\$280	2005	\$250